



STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

TORRI A. JACOBUS, ESQ., DIRECTOR
CENTER FOR SELF HELP AND
DISPUTE RESOLUTION

POST OFFICE BOX 488
ALBUQUERQUE, NEW MEXICO 87102
505-841-7412

Re: Settlement Facilitation — Tips for Preparation and Participation

**LAWYERS — PLEASE PROVIDE TO YOUR CLIENTS
SELF-REPRESENTED LITIGANTS PLEASE READ CAREFULLY**

Dear Litigant,

Your case has been ordered to settlement facilitation. We are providing this letter to all parties, both those who are self-represented and those who are represented by legal counsel. The purpose is to help you begin to understand the process. We believe providing you with information in advance may help you achieve a better result.

You or your attorney will receive an information packet, along with the Referral Order. Additional information is available from the Center for Self Help and Dispute Resolution website, including Local Rule 2-602 which governs the Settlement Facilitation Program.

<http://www.nmcourts.gov/seconddistrictcourtalt2.html>

SETTLEMENT FACILITATION is a court ordered confidential process where the parties meet with a facilitator to explore whether a negotiated settlement is possible. The result may be a voluntary settlement agreement, a voluntary agreement on some issues and not others, or no agreement. You are not required to settle but you are required to attend and to participate in good faith.

Differences between settlement facilitation and trial are important, including:

Settlement Facilitation

Informal Discussion

Joint Problem Solving

Voluntary Agreements by Parties

Trial

Formal Procedural Rules

Advocate to "Win"

Judge Decides

The differences may affect how you present your situation:

- In trial, you advocate to convince the judge to decide in your favor;

- In settlement facilitation, you explain your concerns, listen to the other party's concerns, and try to work together to find a solution.

In both, the goal is the same —to decide how to resolve the dispute. You need to consider what words and tone will best work in each setting.

PREPARATION is essential. You need to organize your case, identify your goals, and select the evidence that supports your case. This is like preparing for trial. In both trial and settlement facilitation, if you are not prepared the risk of a disappointing outcome is greater.

You may not have an opportunity to present all that you have prepared. What is important is that you understand your case, particularly its weaknesses as well as its strengths. This understanding will help you know what settlement options may work for you. Time is wasted and good settlement opportunities may be lost for the unprepared.

Preparation should start with:

- List the issues to be decided;
- Identify your position on each issue;
- Identify the available evidence for each issue;
- Identify the weaknesses and strengths of your position on each issue;
- Prepare a short way to explain your side of the case.

Preparation should also include examining the range of options for how the case may end. There is the best way for you, the best way for the other party, what you could live with, what the other party could live with, and the wide range of what a judge could do. The goal is to find out what are the "available deals." If there is an acceptable overlap between the parties' positions, a good settlement may be negotiated in that middle range.

Organize Your Papers in folders, a notebook, or something which will help you. Prevent papers from becoming unorganized during a session. Being distracted by disorganized papers will hurt your opportunity for a good outcome.

Practice with someone. See if you can give a clear, plain, concise explanation of your case. See if you can answer questions. Test if how you organized your case will work for you — can you find information as needed. These preparation steps might seem like a lot. However, experience shows that preparation is one primary predictor of whether a good outcome is possible.

A SETTLEMENT INFORMATION SHEET is required from you before the session. You must deliver the sheet to the facilitator at least five (5) days before the session. Please see the information packet for more details. Failure to submit this document may be reported to the judge and may greatly undermine

the process. A clear, concise settlement information sheet may accelerate the process and help achieve a good result — this is your chance to start the process on a good footing.

PARTICIPATION is how you conduct yourself in a problem solving process. Attitude may be everything. If you are only in "attack mode," then the other side will "defend and attack." If you want to solve the problem, consider what other styles may be more helpful. For example, consider how you might react to being attacked by the other party. Then, consider how you might react if the other party listens to you with an open, flexible mind. Words and tone will be important.

A facilitator may use different formats during the session, including

- Opening Statements — You may be asked at the beginning to explain your case to the facilitator while the other party listens. You will then listen while the other party explains;
- Joint Sessions — You may be in a discussion with everyone in the room, the facilitator and all parties;
- Individual Sessions — You may find yourself alone with the facilitator for an opportunity to privately explore the weakness, strengths, and other aspects of your case and the negotiations;
- "Shuttle Diplomacy" — You may find the facilitator carries settlement proposals between the parties, who are each in separate rooms;
- Joint Negotiations — You may find the facilitator guides negotiations with everyone in the same room.

You need to understand that a good facilitator may select a different format for different stages of the session. Listen carefully when the facilitator explains each stage. You may need to adjust how you participate to fit the format.

SUMMARY

Shift gears - people come to the court house often to experience the "adversarial process." Settlement facilitation is an opportunity for both parties to work on "the same side," the side of solving the dispute.

Settlement agreements are of your choosing. Voluntary agreements often are creative, cost effective, and contain the best available deal. Judges are limited by law for the available choices for decisions.

Do yourself a favor - while you are not required to settle, you should make full use of the opportunity with a facilitator's assistance to determine if and how your case may be resolved.

Thank you.